

MANISTEE CITY PLANNING COMMISSION

Meeting of Thursday, December 2, 2010
7:00 p.m. - Council Chambers, City Hall, 70 Maple Street,
Manistee, Michigan

AGENDA

I Call to Order

II Roll Call

III Approval of Agenda

At this time the Planing Commission can take action to approve the December 2, 2010 Agenda.

IV Approval of Minutes

At this time Planning Commission can take action to approve the November 4, 2010 meeting Minutes.

V Public Hearing

None

VI New Business

First Street Re-construction

Jeff Mikula, Abonmarche will present to the Planning Commission the First Street Re-construction Project.

Election of Officers


According to the By-Laws of the City of Manistee Planning Commission their annual election of Officers is held at the December Meeting for the following year.

- Chair** - The Planning Commission will select a Chair for 2011.
- Vice-Chair** - The Planning Commission will select a Vice Chair for 2011.
- Secretary** - The Planning Commission will select a Secretary for 2011.



PLANNING AND ZONING
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MEMORANDUM

TO: Planning Commissioners
FROM: Denise Blakeslee 
DATE: November 24, 2010
RE: December 2, 2010 Planning Commission Meeting

Commissioners, we have the following items on the December 2, 2010 Planning Commission Agenda:

New Business:

First Street Re-construction - Jeff Mikula, Abonmarche will present to the Planning Commission the First Street Re-construction Project.

Chair - The Planning Commission will select a Chair for 2011.

Vice-Chair - The Planning Commission will select a Vice Chair for 2011.

Secretary - The Planning Commission will select a Secretary for 2011.

Appointment of a Recording Secretary 2011 - The Planning Commission Secretary appointed for 2011 may appoint a Recording Secretary for 2011.

Old Business:

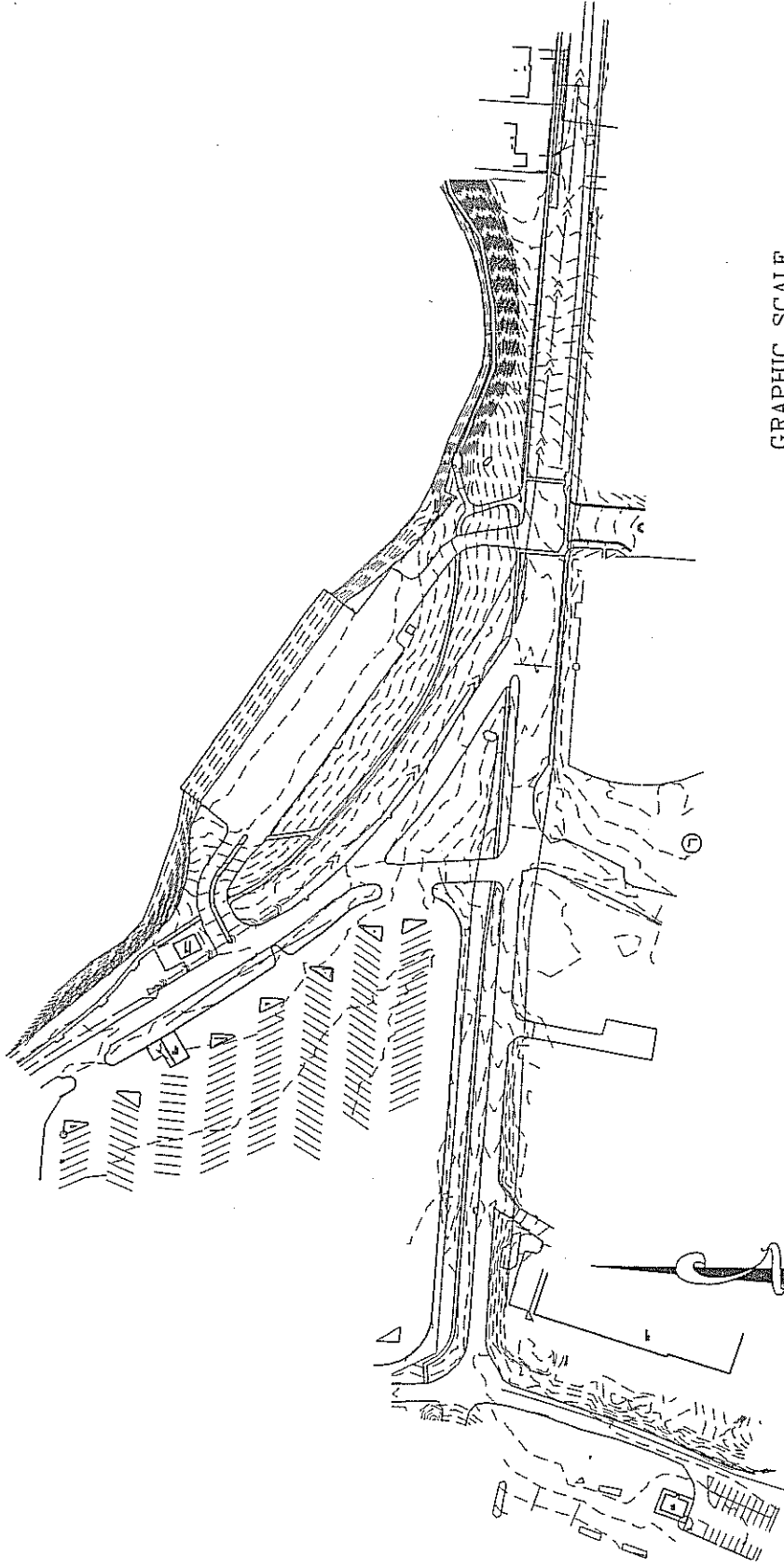
Former Harbor Village Sales Office, 100 Marina Drive - Parcel Split - This request was postponed to allow the attorney time to review the Easements for ingress/egress and parking.

Medical Marihuana - The Planning Commission will continue to discuss issues relating Medical Marihuana. Chief Bachman asked that the Commission be forwarded a copy of a letter he received from Prosecuting Attorney Ford Stone dated 11/17/10.

The question came up if discussion during a Planning Commission Meeting can be "off the record". All Planning Commission meetings are open to the public and because they are open to the public any statements made during the meeting may be reported.

If you are unable to make the meeting please call or leave a message 398-2805.

EXISTING CONDITIONS



GRAPHIC SCALE

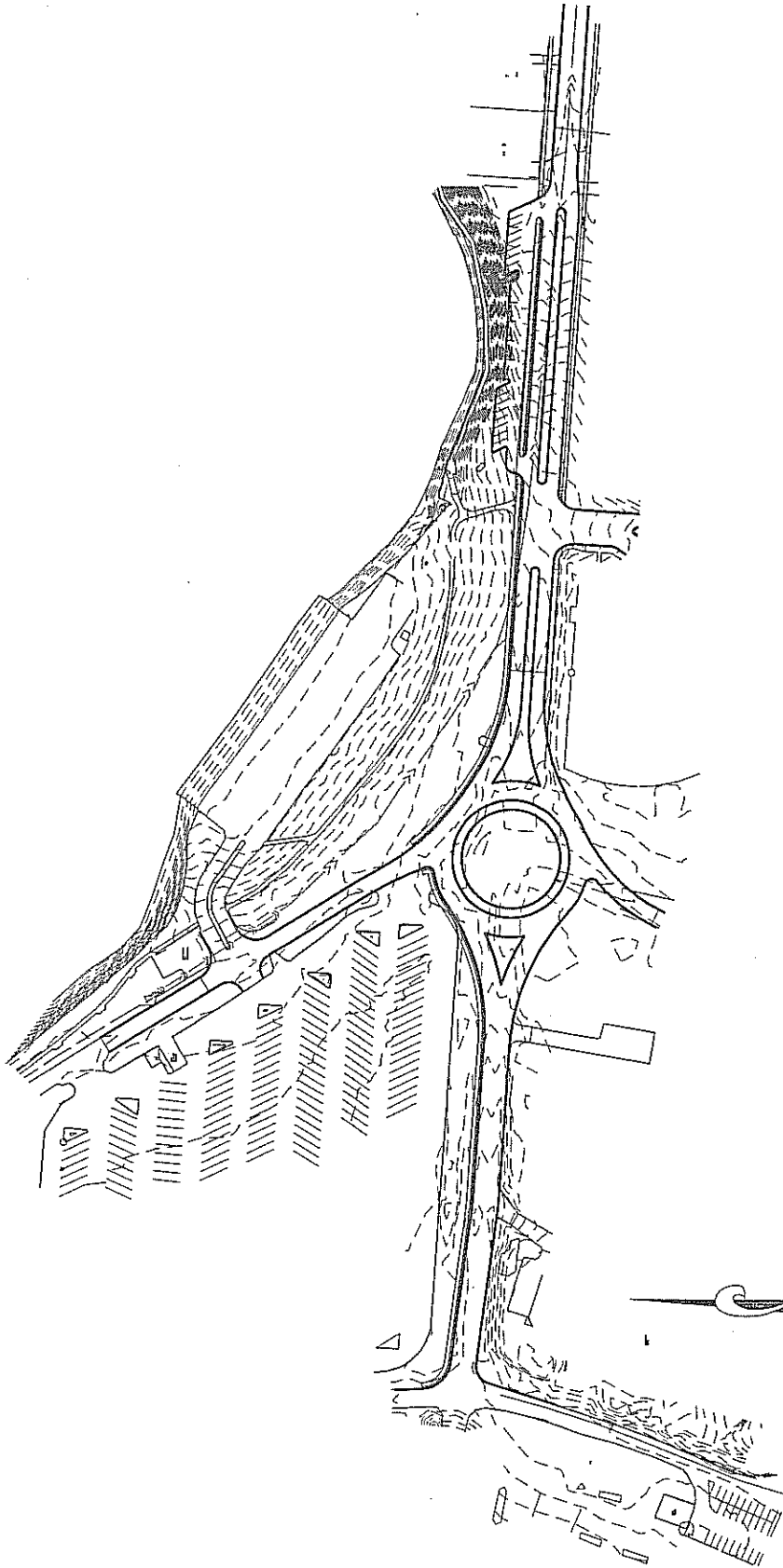


(IN FEET)
1 inch = 150 ft.



DATE: NOV 2010 JOB NO. 10-0049 SH. 1 of 3

PROPOSED CONDITIONS



GRAPHIC SCALE




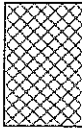

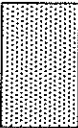
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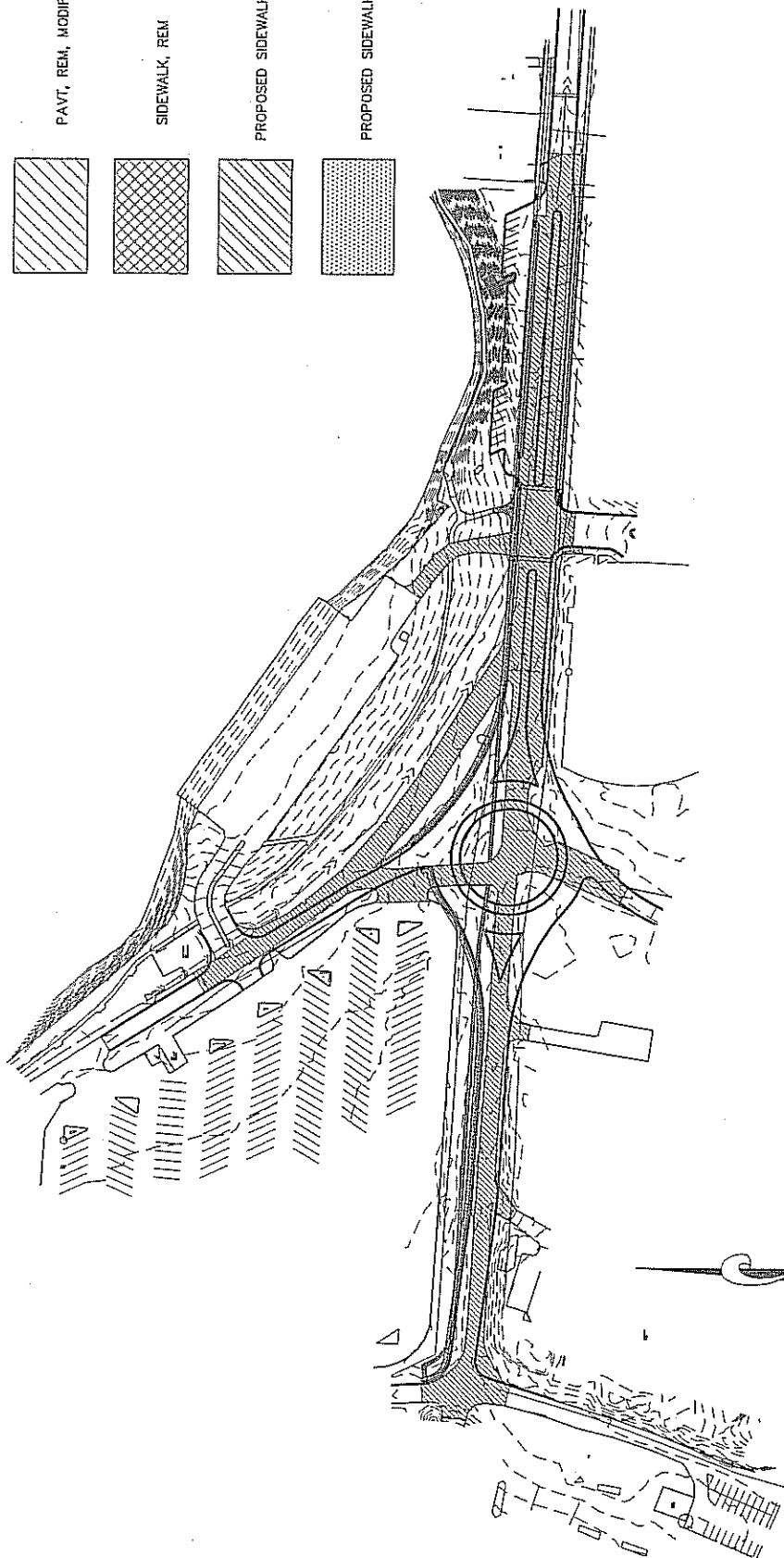
ABONMARCHÉ
Confidence by Design

DATE: NOV 2010 JOB NO. 10-0049 SHT. 2 of 3

PROPOSED AND EXISTING CONDITIONS

HATCH LEGEND

	PAVT, REM, MODIFIED
	SIDEWALK, REM
	PROPOSED SIDEWALKS
	PROPOSED SIDEWALK RAMP



GRAPHIC SCALE



(IN FEET)
1 inch = 150 ft.

ABONMARCHÉ
Confidence by Design

DATE: NOV 2010 JOB NO. 10-0049 SH. 3 of 3



Ford K. Stone, Prosecuting Attorney

Jason H. Haag, Chief Assistant Prosecuting Attorney

Colin B. MacBeth, Assistant Prosecuting Attorney

Manistee County Courthouse • 415 Third Street • Manistee, Michigan 49660

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November 17, 2010

Michigan State Police
Manistee County Sheriff's Department
Manistee City Police Department
SSCENT Narcotics
Department of Natural Resources

I have enclosed a draft copy of the Manistee County Medical Marijuana Plan, modeled after the one adopted by Midland County. I expect there will be continued questions about the application of Michigan's Marijuana Law, and I intend this to be a modifiable document which will change according to our needs.

Please route this to all Officers in the field(s) so that they are aware of this new and highly confusing law.

Thank you very much for your help and cooperation.

Very truly yours,

Ford K. Stone
Prosecuting Attorney

FKS/jh
enc.

Manistee County Medical Marijuana Enforcement Plan
March 17, 2009(Modified April 2, 2009)

Enforcement

- I. Search/Seizure issues (with or without card)
 - a. Still can't possess marijuana: (333.26427(b)(2))
 - a. On school bus
 - b. School grounds (preschool, primary, secondary only)
 - c. Correctional facility
 - b. Still can't smoke marijuana: (333.26427(b)(3))
 - a. Any form of public transportation
 - b. Any public place (defined by rule R333.101(16) as any place open to the public
 - c. Still can't grow marijuana outside (333.26424(a)) unless can meet definition of enclosed locked facility
 - d. However, you now can't arrest any person who is helping qualified patient use or administer the marijuana (333.26424(i))
- II. Search/Seizure issues (with card)
 - a. Can't use card or application for card as pc for search (333.26426(g))
 - b. Qualified Patient and Primary Caregiver must have card issued and in their possession to avoid arrest/prosecution etc. (333.26424(a) and (b))
 - c. Qualified Patient Can't possess more than 2.5 ounces of usable marijuana nor more than 12 plants in an "enclosed locked facility" (if they don't have a primary caregiver.) If they have caregiver cannot have more than 12 plants or 2.5 ounces collectively for that patient. (333.26424(a))
 - d. Primary Caregiver can't have more than 2.5 ounces of usable marijuana nor more than 12 plants for each person they service. (333.26424(b)) *qualified patient and primary caregiver cannot possess more than this amount collectively
 - e. Qualified Patient cannot drive under influence (333.26427(4))
This appears to be an exception to the general OUID per se statute.

- f. Sales to someone without a card is a 2 year felony and revocation of card in addition to any other charge for delivery of marijuana (333.2624(k))

III. Verification of card

I spoke to MDCH on 3-4-09 they said they are hoping to run the information through LEIN but it will be done by number so you will need the number of the license to check it. If that isn't available they will try to build a stand alone system probably like SOS?

As of April 2, 2009 there is still no plan on how to verify a valid card

IV Affirmative Defenses

- a. Either Qualified Patient and/or Primary Caregiver may assert affirmative defense. This is a 3 part test and results in dismissal of the case if they can prove:
 - (1) (Physician signed document outlining with statutory language the need for medical marijuana (HEARSAY ISSUES) and
 - (2) Together they (Patient/Caregiver) didn't possess more than allowed and
 - (3) They were using, growing, transporting etc for valid purpose of medicinal use which is presumed under (333.2624(d))
- b. A "Person" may assert a medical marijuana defense (333.26438) using same 3 part test listed above. However, unless they are a qualified patient or primary caregiver they do not have the same presumption for medical use outlined in (333.2624(d)) and therefore would have to prove it is for medical purposes and not just recreational use. I believe that this would require medical testimony because it is a medical determination.

V. Forfeitures

Forfeitures will be subject to the same standard/problems as the criminal case. If a person has possession of card and does not possess more than what is allowable in an enclosed locked facility and they have not sold to a person who is not a qualified patient or primary caregiver, then forfeiture is not available.

VI. Liability for wrongful arrest

The statute provides that a person who validly fits within the protections of the statute shall not be subject to arrest provided that they have possession of the card. An arrest for someone who does possess a valid card could result in civil complaints against the arresting agency.

VII. Enforcement plan

It is still illegal to possess and use Marijuana under Michigan State law for those not in possession of a MMC and it is still a violation of Michigan law for those who do possess a MMC if they are not in complete compliance of the Medical Marijuana Act. Actually, the statute creates a new 2-year felony charge that can be authorized in addition to the traditional charges provided currently by law if a person violates this act.

There are 4 ways a person could be in violation of the law if they hold a MMC: (1) possess marijuana in a way that violates the statute (i.e. possess more than allowed by law*, not proper storage of plants or failing to have their card in their possession) (2) Sell marijuana to non protected person, (3) use marijuana improperly (prohibited location or under influence while driving or working negligently) or (4) give fraudulent information regarding status of marijuana to avoid arrest.

* A person can be both a qualified patient and a primary caregiver. Accordingly a person may be able to possess up to 72 plants (60 for their patients and 12 for themselves)

Suggested enforcement procedures

Controlled Buys

- Determine if C/I is a card holder either as a qualified patient or primary caregiver and if so do not use them.
- When arresting request all individuals to provide their Medical Marijuana Card (MMC).
- Ask questions about who has access to where the marijuana is found and note the location. Remember an enclosed locked facility is a defined term and must be a place accessible ONLY to qualified patient or primary

caregiver. If anyone else has keys to the closet who is neither of these protected individuals it is not an "enclosed, locked facility". However, we need proof, so please photograph or video the accessibility of the marijuana grow operation or statements regarding who has access.

- Make specific notation of marijuana in excess of amounts allowed (2.5 oz or 12 plants) and take photographs to document it **prior to seizing it**. Make sure the individuals you question indicate whom the marijuana is for specifically. Identify the name and address for all individuals that the primary caregiver claims to be growing for.
- Report all violations of to the Michigan Department of Community Health so they can move to revoke card. (specific website and address is currently unknown)

Road stops

- If you find marijuana during a traffic stop ask for (MMC) from driver and from all of the passengers. The individual must have card in their possession.
- If you suspect that a qualified patient is driving under influence: (1) Ask for all cards (MMC). If you have PC that the driver is under the influence (2) do sobrieties and then request consent for blood. If no consent and you have PC then seek a search warrant for the blood.
- Report all violations of to the Michigan Department of Community Health so they can move to revoke card. Webpage, address and phone number currently unknown.
- Remember to document any circumstances where person provided false information to avoid arrest because it is an additional \$500 fine.
- Run CCH for each person who has a medical marijuana card (MMC) to check if they have prior felony conviction for drug offense. If so, and they are only a primary caregiver, they cannot validly hold that position (MCL 333.26423(h)). It appears you can be a convicted drug felon and be a patient as there doesn't appear to be a prohibition or limitation on the patient. NOTE you must have complaint number to run LEIN/CCH or be in violation of LEIN policy.
- If a person holds a card from one of the 12 states or an "insular possession of the United States" do not arrest unless the person possess more marijuana than allowed by the Michigan statute.

Search Issues

As usual these are going to be done on a case-by-case basis. However some answers to anticipated scenarios are:

- If an officer observes open marijuana not in an enclosed, locked facility (plants out in open in a house or plants growing outside) this would be a violation of the Act and therefore subject to search.
- Information that a person is selling marijuana. Work to get a buy through a non-card holding C/I or undercover officer or get statement from non-card holding person who purchased marijuana.
- If you are searching a house and the suspect indicates that he/she has a medical marijuana card you can check status of the card in Michigan and if they cannot produce it you may decide to collect the evidence and submit the report but do not arrest.
- **NEVER USE A C/I WHO CARRIES A MEDICAL MARIJUANA CARD**